

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIGITAL CONTROL, INCORPORATED,
a Washington corporation, and MERLIN
TECHNOLOGY, INC., a Washington
corporation,

Plaintiffs,

v.

RIDGE TOOL COMPANY, an Ohio
corporation,

Defendant.

No. C03-2297Z

ORDER

This matter comes before the Court on Defendant Ridge Tool Company's ("Ridge Tool") Motion for Attorneys' Fees and Costs, docket no. 65, pursuant to this Court's Order of Dismissal, docket no. 40.

The decision to award fees to the prevailing party in a patent infringement action involves a two-step process. Forest Laboratories, Inc. v. Abbott Laboratories, 339 F.3d 1324, 1327 (Fed. Cir. 2003). First, the Court must determine whether the prevailing party has proved by clear and convincing evidence that the case is "exceptional." Id. The Court found this case exceptional because Digital Control, Incorporated ("DCI") engaged in "litigation misconduct or unjustified and bad faith litigation." See Order, docket no. 40, at 2. Litigation misconduct and unprofessional behavior are relevant to the award of attorneys'

1 fees, and may suffice, by themselves, to make a case exceptional. Sensonics, Inc. v.
2 Aerosonic Corp., 81 F.3d 1566, 1574 (Fed. Cir. 1996).

3 When the Court finds the case to be exceptional, the Court must determine whether an
4 award of attorneys' fees is appropriate. Forest Laboratories, 339 F.3d at 1328. The Court
5 previously found that Ridge Tool was entitled to an award of reasonable attorneys' fees.
6 Order, docket no. 40, at 2. The Court based that finding on Plaintiffs' admitted failure to
7 comply with deadlines set by this Court, and on Plaintiffs' conduct during this litigation.

8 The Court denied Plaintiffs' Motion for Reconsideration, docket no. 41. The Court
9 considers those arguments, however, in the context of determining the award of reasonable
10 attorneys' fees. Although the Court has found that Plaintiffs' misconduct in this litigation
11 justifies an award of attorneys' fees to Ridge Tool, the Court did not find that DCI's
12 infringement claims were baseless and without merit, or that DCI pursued meritless claims
13 throughout this litigation. The Court agrees with DCI that the award of attorneys' fees in
14 this case must be related to the exceptionality of the case. Beckman Instruments, Inc. v.
15 LKM Produkter AB, 892 F.2d 1547, 1553 (Fed. Cir. 1989) (Court must consider the
16 "particular misconduct" in determining the proper attorneys' fees award.); see also Special
17 Devices, Inc. v. OEA, Inc., 269 F.3d 1340, 1344 (Fed. Cir. 2001) ("[T]he amount of the
18 attorney fees depends on the extent to which the case is exceptional.").

19 Defendant Ridge Tool requests the full amount of its attorneys' fees and costs, in an
20 amount of \$418,503.60. Defendant's request is unusually high in light of the fact that no
21 substantive motions practice occurred in this case prior to the Plaintiffs' Motion to Dismiss,
22 docket no. 31. There was no discovery-related motions practice, and the case was dismissed
23 before Markman, and months before the close of discovery and the deadline for dispositive
24 motions. Defendant's request for the full amount of its attorneys' fees and costs is not
25 related to the exceptional nature of this case. While Plaintiffs' conduct during this litigation
26 may have been exceptional, Defendant has not established (or even attempted to establish)

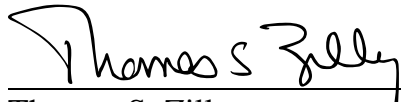
1 that Plaintiffs did not have a colorable claim for patent infringement. But see Afromowitz
2 Decl., docket no. 36 (opining that Defendant's NaviTrack device infringes the '683 and '008
3 patents). Also important to the Court's determination is the fact that Defendant never sought
4 to bring its issues with Plaintiffs' conduct to the Court during the pendency of this litigation,
5 and only raised these issues in its Response to Plaintiffs' Motion to Dismiss. As such, the
6 Court finds that Defendant is not entitled to its full measure of attorneys' fees.

7 Plaintiffs argue that a compensatory amount of zero should be awarded where a
8 prevailing party incurs no additional costs as a result of the non-prevailing party's "bad
9 behavior." See, e.g., Special Devices, 269 F.3d at 1344 (citing S.C. Johnson & Son, Inc. v.
10 Carter-Wallace, Inc., 781 F.2d 198, 201 (Fed. Cir. 1986)) ("the amount of attorney fees
11 awarded may be zero, even though the case is exceptional."). However, a compensatory fee
12 amount of zero is not appropriate in this case. The Court finds that Plaintiffs' litigation
13 misconduct had the effect of increasing the Defendant's attorneys' fees in this litigation by
14 increasing the complexity of the litigation and causing delay.

15 The amounts proposed by the parties as a reasonable award of attorneys' fees are
16 unreasonable. Defendant seeks attorneys' fees and costs for defending the entire
17 infringement suit in the amount of \$418,503.60. Plaintiffs argue that the Court should not
18 award any compensatory attorneys' fees. A review of billing records at the time of the
19 litigation misconduct, as identified by the Court, is similarly unhelpful. Those billing
20 records do not specifically disclose additional work performed as a result of Plaintiffs'
21 conduct, and reveal only that Defendant's attorneys' were spending time on the case at that
22 time. The Court finds that not more than approximately ten percent of Defendant's
23 attorneys' fees and costs can be traced to the increased complexity and delay caused by
24 Plaintiffs' misconduct. Therefore, the Court awards the Defendant total fees and costs of
25 \$40,000.

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2 IT IS SO ORDERED.

3 DATED this 20th day of May, 2005.

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5 Thomas S. Zilly
6 United States District Judge
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